
Commerce & Labor Committee

HB 2198

Brief Description: Waiving unemployment compensation employer penalties.

Sponsors: Representatives Clements, Conway, Condotta and McDonald.

Brief Summary of Bill

- Waives penalties for an employer's omission of a social security number in a quarterly wage report to the Employment Security Division when the employee failed to provide a social security number to the employer.

Hearing Date: 2/28/05

Staff: Christopher Abbott (786-7119).

Background:

When employers hire new workers, they must comply with a several federal and state requirements for reporting or recording an employee's social security account number (SSN):

Federal Employment Eligibility Verification Requirements

The Immigration Reform and Control Act of 1986 prohibits employers from knowingly employing an unauthorized alien or failing to properly verify the employee's eligibility to work in the United States. Within three days of beginning work for the employer, the worker must fill out a Department of Justice (DOJ) Form I-9 and provide accompanying documentation proving employment authorization and identity. The worker may satisfy this requirement with an SSN card along with proof of identity, but may also meet the requirement with other documentation approved by the DOJ. The employer must retain the I-9 form for three years.

Federal Internal Revenue Service Reporting Requirements

Employees

On the first day of work for an employer, most employees must do the following:

- show the employer the worker's SSN card, if the worker has one available;
- advise the employer of the worker's SSN, if the worker has an SSN but does not have a card available;
- provide the employer with a receipt from the Social Security Administration (SSA) acknowledging receipt of an SSN application; or
- provide the employer with sufficient information to fill out an SSN application form, if the worker has not yet applied for an SSN.

If the worker does not have an SSN, he or she must apply for one within seven days of beginning work. Additionally, the worker must promptly show the SSN card to the employer upon receipt.

Agricultural laborers may provide the information on the first payday instead of the first day of work. Additionally, if they have not yet applied for an SSN, they need only provide the employer with their full name and address.

Employers

Employers must report employee names and SSNs, or information contained in an SSA receipt, in returns and other statements filed with the IRS. If the employee only provided information to fill out an SSN application, the employee must attach an SSN application form to its returns and statements including this information. If the employee does not provide the required information, the employer must attach an SSN application form to any returns or statements containing as much information as the employer can provide. In these situations, employers must remind employees of their obligation to file an SSN application within seven days of beginning work.

If the employee is an agricultural laborer and has not provided an SSN, the employer need only provide the employee's name and present or last known address.

Federal Unemployment Compensation Reporting Requirements

As a condition for funding the state Employment Security Department (ESD), federal law requires states to gather and report certain wage information from employers, including SSN's of all employees. State agencies must make a quarterly report to the U.S. Department of Health and Human Services with information for the National Directory of New Hires, a database designed to help states enforce child support laws. The report must contain information gathered from employers including the names, address, wages, and SSN of employees and the employer's state and federal employer identification numbers.

State Employer Reporting Requirements

In order to meet its reporting requirements under federal law, ESD requires employers to file a quarterly report listing each employee's name, SSN, hours worked, and wages paid during the quarter. By statute, these reports must be complete and filed in a timely manner.

Under emergency rules issued January 2, 2005, ESD will deem a report incomplete if the employer omitted an SSN or included duplicate or impossible SSN's. An employer filing an incomplete report faces a minimum penalty of \$75 and a maximum penalty of either \$250 or 10 percent of quarterly contributions per occurrence, whichever is less. If no quarterly tax was due, the employer will be fined between \$75 and \$250, depending on the number of past occurrences.

Waivers are granted under the following circumstances:

- ESD must waive penalties if adequate information has been provided and the department has either failed to act or has advised the employer of no liability or inability to decide the issue.
- ESD may waive penalties for good cause if the report was not filed in a timely manner under several specific circumstances.
- ESD may waive penalties for good cause if either: (1) the employer made a good faith effort to comply, (2) the report was in an incorrect format but the employer made a good faith effort to quickly correct the problem upon notification, or (3) the employer demonstrates that an impossible social security number was provided by the employee.

Employers must request a waiver and the burden of proof falls upon the employer. ESD does not generally waive penalties for reports omitting SSN's or providing duplicate numbers.

Summary of Bill:

Employment Security Department must waive any penalties levied against an employer for failure to report an employee's security account number (SSN) on an otherwise complete quarterly wage report under circumstances where the employee failed to do any of the following within seven days of that employee's first day of work:

- show the employer an SSN card issued by the Social Security Administration (SSA);
- advise the employer of the employee's name and SSN; or
- show the employer a receipt from the SSA acknowledging receipt of an SSN application.

The circumstances justifying waiver are presumed if the employee worked fewer than 70 hours and the wage report lists the employee's name, hours worked, and wages paid.

Rules Authority: The bill does not contain provisions addressing the rule-making powers of an agency.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.